

GOVERNOR CUOMO'S LATEST EXECUTIVE ORDER EXTENDS DEADLINES TO SUBMIT ABSENTEE BALLOTS FOR SCHOOL VOTE

Hodgson Russ Education Alert
June 8, 2020

Earlier today, June 8, 2020, Governor Cuomo issued Executive Order 202.39 which again revises the procedure that must be followed by voters and school districts relative to the annual school budget vote and board election. Specifically, although voters must personally deliver their ballots to the Office of the District Clerk, by hand or via drop box, by 5:00 p.m. on June 9, 2020, the EO extended the deadline by which voters must return their absentee ballots to school districts *by mail* until no later than 5:00 p.m. on June 16, 2020.

Additionally, the EO requires all school districts to close and remove any drop boxes or other receptacles that were used to collect hand delivered ballots, as applicable, promptly at 5:00 p.m. on June 9, 2020. All ballots must remain unopened pending delivery of mailed ballots, and all ballots are to be removed and canvassed after 5:00 p.m. on June 16, 2020. The EO does not alter the June 9, 2020 election date but provides voters with additional time in which to return their absentee ballots by mail.

Governor Cuomo previously issued Executive Order 202.26 which suspended in-person voting and required school districts to send out absentee ballots to all qualified voters with a postage paid return envelope. All ballots, regardless of method of delivery to the district, were required to be received in the office of the district clerk no later than 5:00 p.m. on June 9, 2020. This newest EO appears to have been issued in response to the myriad challenges faced by school districts, including as a result of vendor delays in printing and mailing ballots and other supply shortages. In addition, the EO appears to reinforce the Governor's efforts to prevent the disenfranchisement of qualified voters who may not have had the opportunity to receive and timely return their absentee ballots.

We recommend that school districts consider livestreaming the ballot count to the greatest extent practicable, in order to instill confidence in the integrity of the result in this unprecedented school district vote. In addition, and in response to the latest EO, we suggest that school districts consider the following protocols on June 9, 2020 and June 16, 2020, respectively:

Attorneys

John Alessi
Luisa Bostick
Peter Bradley
Andrew Drilling
Ryan Everhart
Michael Flanagan
Andrew Freedman
John Godwin
Elizabeth Holden
Richard Kaiser
Michael Maxwell
Elizabeth McPhail
Lindsay Menasco
Paul Meosky
Kinsey O'Brien
A. Joseph Scott III
Jeffrey Stone
Jeffrey Swiatek
Marla Waiss
Sujata Yalamanchili

Practices & Industries

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JUNE 9, 2020

- Request that the Election Chairperson be present on site tomorrow, June 9, 2020, in order to “open” the annual meeting and election at 5:00 p.m.;
- Continue to appropriately monitor any drop boxes or receptacles used for hand delivery of ballots throughout the day to ensure integrity of the voting process and security of the ballots;
- The Election Chairperson should declare the drop boxes or receptacles for hand delivery officially closed at 5:00 p.m. and ensure that such boxes are locked and secured. Districts may wish to also have at least one election inspector present to participate in the securing of all ballots received to date. Ballots must be kept in a secure location and periodically monitored to ensure that ballots are not tampered with or stolen. Access to the ballots must be restricted to avoid allegations of impropriety and/or voter challenges to the legitimacy of the process.
- The Election Chairperson should declare the annual meeting and election adjourned until 5:00 p.m. on June 16, 2020 at which time all ballots will be canvassed and results will thereafter be announced.

TIME BETWEEN JUNE 9, 2020 and JUNE 16, 2020

- The EO is silent as to whether school districts must provide or distribute absentee ballots to qualified voters upon request after 5:00 p.m. on June 9, 2020. However, in light of the Governor’s clear intent to provide for expanded voter participation, districts may wish to consider providing such ballots upon request to any qualified voter, with the direction that any such ballots must be returned by mail no later than 5:00 p.m. on June 16, 2020.
- Ballots are not to be opened or canvassed prior to 5:00 p.m. on June 16, 2020. Ensure that the ballot mailing envelopes stay in the same form, or as close thereto, as was originally received from the voter. We do not recommend opening the outer, or transmittal, envelopes prior to 5:00 p.m. on June 16, 2020 to ensure the integrity of the process.

JUNE 16, 2020

- At 5:00 p.m., the Election Chairperson “opens” the adjourned annual meeting and election for the purpose of declaring the “polls” closed and the ballots may begin to be counted.

In recognition of these ever-changing requirements, the following language can be used at 5:00 p.m. on June 9 by your election chairperson to confirm the status of the voting process:

The Annual Meeting and Election is hereby called to order on this day, June 9, 2020, at 5:00 p.m. In accordance with Governor Cuomo’s Executive Order 202.39, the District’s acceptance of hand-delivered absentee ballots to be canvassed for the June 9, 2020 school election and budget vote officially closed at 5:00 p.m. The District Clerk will not accept any further absentee ballots except those received by mail no later than 5:00 p.m. on June 16, 2020. The Annual Meeting and Election is hereby adjourned until 5:00 p.m. on June 16, 2020 for purposes of canvassing and tabulating all validly submitted absentee ballots.

We will continue to monitor these developments and provide you with additional information as it becomes available. If you have any questions about the upcoming Budget Vote and Board Member Election described in this alert, please contact Jeffrey Swiatek (716.848.1449), Andrew Freedman, (716.848.1332), or Lindsay Menasco (716.848.1214).

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